

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 STEVEN CHAVEZ,

13 Plaintiff,

14 v.

15 COUNTY OF LOS ANGELES, et al.,

16 Defendants.
17

No. CV 11-4705-PLA

**ORDER DISMISSING ACTION FOR
FAILURE TO PROSECUTE AND FOLLOW
COURT ORDERS**

18 For the reasons set forth below, this action is dismissed without prejudice for failure to
19 prosecute and follow Court orders.
20

21 I.

22 **BACKGROUND**

23 The Court finds as follows:

24 1. On June 2, 2011, plaintiff, represented by counsel, filed a Complaint under 42 U.S.C.
25 § 1983 alleging civil rights violations while in the custody of defendants and under the supervision
26 of the Los Angeles County Sheriff's Department.
27
28

1 2. On June 15, 2011, and August 16, 2011, plaintiff and defendant consented to proceed
2 before the undersigned Magistrate Judge in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P.
3 73.

4 3. On July 19, 2013, plaintiff's counsel filed a Motion to withdraw as attorney of record, on
5 the ground that plaintiff "has not been in communication with his counsel . . . for at least four
6 months despite counsel's attempts to reach Plaintiff by phone, by personal visit to his last known
7 address and by correspondence sent to his last known address via U.S. Mail," and declaring under
8 penalty of perjury that counsel mailed a true copy of the "Notice of Motion and Motion to Withdraw
9 as Attorneys of Record and Declaration of Amy Wallace on Motion to Withdraw as Attorneys of
10 Record" to plaintiff's last known address.

11 4. In a Minute Order issued July 24, 2013, the Court scheduled a hearing for 10:00 a.m.
12 on August 27, 2013, to consider the Motion of plaintiff's counsel to be relieved as attorney of
13 record in this action. The Minute Order instructed plaintiff that "he must attend the hearing," and
14 that "failure to attend could result in this action being dismissed for lack of prosecution and failure
15 to follow court orders." Counsel for plaintiff was ordered to serve a copy of the Minute Order on
16 plaintiff at his last known address, both by mail and by personal service, and to provide proof of
17 such service prior to the August, 27, 2013, hearing.

18 5. On July 30, 2013, counsel for plaintiff filed a proof of service, indicating that counsel
19 served a copy of the Minute Order, by mail, at plaintiff's last known address. On August 13, 2013,
20 an agent of plaintiff's counsel filed a declaration with the Court stating that, on August 12, 2013,
21 he went to plaintiff's last known address to personally serve plaintiff with a copy of the Court's
22 Order, and was unable to effect personal service because ownership of the facility had changed,
23 and the facility "had no record of Plaintiff's residence there and would not accept personal service
24 of any documents for Plaintiff."

25 6. When plaintiff did not appear at the August 27, 2013, hearing for the pending Motion,
26 the Court granted plaintiff's counsel's Motion to Withdraw as Attorneys of Record and ordered
27 plaintiff, now proceeding pro se, "to file a document advising the Court of his intention to proceed
28 with this action no later than September 13, 2013," and further advised plaintiff that "failure to

1 comply with this Order will result in the action being dismissed for failure to prosecute and follow
 2 court orders.” The Court Clerk was directed to serve the Order on plaintiff at his last known
 3 address.

4 **To date, plaintiff has not advised the Court of his intention to proceed with this**
 5 **action, as most recently ordered by the Court on August 27, 2013, and his time to do so has**
 6 **passed.**

8 II.

9 DISCUSSION

10 It is well established that a district court has authority to dismiss a plaintiff’s action because
 11 of his or her failure to prosecute or to comply with court orders. See Fed. R. Civ. P. 41(b); Link
 12 v. Wabash Railroad Co., 370 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L.Ed.2d 734 (1962) (holding that
 13 a court’s authority to dismiss for lack of prosecution is necessary to prevent undue delays in the
 14 disposition of pending cases and to avoid congestion in the calendars of the district courts); Ferdik
 15 v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (holding that a district court may dismiss an
 16 action for failure to comply with any order of the court).

17 In determining whether to dismiss this action due to plaintiff’s failure to prosecute or comply
 18 with Court orders, the Court must consider the following five factors: “(1) the public’s interest in
 19 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
 20 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits[;] and
 21 (5) the availability of less drastic sanctions.” Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988);
 22 see also In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); Ferdik, 963 F.2d
 23 at 1260-61 (failure to comply with court orders).

24 The first two factors -- the public’s interest in expeditious resolution of litigation and the
 25 Court’s need to manage its docket -- weigh in favor of dismissal. Plaintiff’s lack of communication
 26 with his former counsel and with the Court -- including repeated failures to respond to his former
 27 counsel’s efforts to contact him, failure to provide his former counsel with an address or phone
 28 number where he can be contacted, failure to attend the scheduled hearing to consider his former

1 counsel's Motion to be removed as counsel of record, and failure to follow Court orders by filing
2 a document advising the Court of his intention to proceed with this action by the ordered date --
3 hinders the Court's ability to move this case toward disposition and indicates that plaintiff does not
4 intend to litigate this action diligently.

5 The third factor -- prejudice to defendant -- also weighs in favor of dismissal. A rebuttable
6 presumption of prejudice to defendants arises when a plaintiff unreasonably delays prosecution
7 of an action. Eisen, 31 F.3d at 1452-53. Nothing suggests that such a presumption is
8 unwarranted in this case.

9 The fourth factor -- public policy in favor of deciding cases on their merits -- weighs against
10 dismissal. However, it is plaintiff's responsibility to move his case toward a disposition at a
11 reasonable pace and to avoid dilatory and evasive tactics. See Morris v. Morgan Stanley Co., 942
12 F.2d 648, 652 (9th Cir. 1991). Plaintiff has not discharged this responsibility. In these
13 circumstances, the public policy favoring resolution of disputes on the merits does not outweigh
14 plaintiff's failure to comply with Court orders.

15 The fifth factor -- availability of less drastic sanctions -- weighs in favor of dismissal. The
16 Court attempted to avoid dismissal by attempting to advise plaintiff that the failure to attend the
17 August 24, 2013, hearing "could result in this action being dismissed for lack of prosecution and
18 failure to follow court orders." Subsequently, the Court attempted to advise plaintiff that failure to
19 advise the Court of his intention to proceed with this action no later than September 13, 2013, "will
20 result in the action being dismissed for failure to prosecute and follow court orders." Nonetheless,
21 plaintiff failed both to attend the August 27, 2013, hearing, and to advise the Court of his intention
22 to proceed with this action by the deadline.

23 Taking all of the above factors into account, dismissal for failure to prosecute and follow Court
24 orders is appropriate. Such a dismissal, however, should not be entered unless plaintiff has been
25 notified that dismissal is imminent. See West Coast Theater Corp. v. City of Portland, 897 F.2d
26 1519, 1523 (9th Cir. 1990). In this case, plaintiff was cautioned about the possibility of dismissal in
27 both the July 24, 2013, and August 27, 2013, Orders.
28

1 Accordingly, plaintiff's action is dismissed without prejudice for failure to prosecute and follow
2 Court orders.

3
4 **III.**

5 **ORDER**

6 IT IS THEREFORE ORDERED that Judgment be entered dismissing this action without
7 prejudice for failure to prosecute and follow Court orders.

8 

9 DATED: September 16, 2013

10

PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE